

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GEORGE LAVELL FROST, )  
Petitioner, ) CASE NO. C05-2109-TSZ-MJB  
v. ) (CR01-325-TSZ)  
UNITED STATES OF AMERICA, ) REPORT AND RECOMMENDATION  
Respondent. )

---

Petitioner is a federal prisoner who was sentenced on August 31, 2005 to 18 months of imprisonment for eight violations of conditions of probation/supervised release. Dkt. #52 in Case No. CR01-325-TSZ. Petitioner has filed a *pro se* motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Dkt. #1 in Case No. C05-2105-TSZ. The motion was referred to the undersigned United States Magistrate Judge on December 30, 2005. Dkt. #4.

A review of the docket sheet in Case No. CR01-325-TSZ reveals that petitioner's direct appeal of his sentence is pending before the Ninth Circuit Court of Appeals.<sup>1</sup> Dkt. #49 in Case No. CR01-325-TSZ. Therefore, petitioner's § 2255 motion is premature. *See United States v. Deeb*, 944 F.2d 545, 548 (9th Cir. 1991) (holding that district courts should not entertain

<sup>1</sup>Petitioner also acknowledges in the current § 2255 motion that his appeal is still pending. Dkt. #1 at 2.

## REPORT AND RECOMMENDATION

1 collateral attacks while a direct appeal is pending). Accordingly, I recommend that petitioner's §  
2 2255 motion be dismissed without prejudice. A proposed Order accompanies this Report and  
3 Recommendation.

4 DATED this 5th day of January, 2006.

5  
6   
7 MONICA J. BENTON  
8 United States Magistrate Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26